

ORDINANCE NO. 352

An ordinance limiting and regulating the construction, installation, operation and maintenance within the corporate limits of the City of Gothenburg, of wired or cabled television and radio systems and services; providing for non-exclusive franchises for not to exceed twenty (20) years, and the conditions thereof; prescribing penalties for such construction, installation, operation, or maintenance without franchise, and for the violation of such regulations and conditions; and providing the effective date hereof.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GOTHENBURG, DAWSON COUNTY, NEBRASKA, TO-WIT:

SECTION I. Short title. This ordinance shall be known and may be cited as "Gothenburg CATV Ordinance".

SECTION II. City Council. The authority to issue franchises authorizing wired or cabled television or radio systems within the corporate limits of the City of Gothenburg is hereby reserved unto the City Council of such City.

SECTION III. All franchises issued pursuant to this ordinance shall be nonexclusive and for a term not to exceed twenty (20) years.

SECTION IV. Limitation on Construction. It shall be unlawful for any person, firm, or corporation, to construct, install, operate, or maintain in or along the streets, alleys, and public ways, or elsewhere within the corporate limits of the City of Gothenburg, a wired or cabled television or radio system without first obtaining from such City of Gothenburg, a franchise authorizing the same.

SECTION V. Every person, firm, or corporation applying for a franchise to construct, install, operate or maintain within the corporate limits of the City of Gothenburg, pursuant to this ordinance, must file with the City Clerk notice of his, their, or its acceptance of the provisions of this ordinance

and a covenant and agreement that such franchise, if granted, shall be subject to the provisions and conditions of this ordinance and amendments thereto.

SECTION VI. Definitions. For the purposes of this

ordinance, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

a. "City" is the City of Gothenburg, Dawson County, Nebraska.

b. "Licensee" is the person, firm, or corporation granted a franchise to operate a system under this ordinance.

c. "Council" is the City Council of the City of Gothenburg, Dawson County, Nebraska.

d. "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.

e. "Cable Television System" hereinafter referred to also as "Cable Systems" or "system" means a system of coaxial cables or other electrical conductors and transmission equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them and other related services to subscribers for a fee.

f. "Gross subscriber revenues" are the receipts only for monthly charges for retransmission of radio or television signals. It shall not include receipts for connection or installation fees or receipts for pay television (movie channel service).

SECTION VII. Grant of authority. Every person, firm or corporation granted a franchise to construct, install, operate, and maintain a wired or cabled television or radio system within the corporate limits of the City of Gothenburg

is hereby granted by the City the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a community television system for the interception, sale and distribution of television signals.

SECTION VIII. Compliance with applicable laws and ordinances. Every such Licensee shall at all times during the period of this permit or any extension or renewal thereof, be subject to all lawful exercise of the police power by the City and to such reasonable regulation by the City as the City shall provide pursuant to Section XX of this ordinance. Every such Licensee shall comply with all laws, statutes, codes, ordinances, rules or regulations applicable to its business, including those of the Federal Communications Commission, and will comply with the Equal Opportunity Act.

SECTION IX. Applicable area. This ordinance shall apply to the present territorial limits of the City and to any area henceforth added thereto during the period of this permit or any extension or renewal thereof. Every such Licensee shall be required to extend service to those sections of the City as the limits of the City now exist and shall be required to extend service to those sections of the City annexed or added to the City after the effective date of this ordinance. Nothing herein contained is intended to preclude every such Licensee from extending its cables and equipment outside the City for the purpose of serving other areas. In the event a dwelling unit is located more than 150 feet from every such Licensee's basic cable system, or requires underground construction which exceeds \$49.95 total cost to every such Licensee, installation shall be performed and charged at the actual cost of time and materials.

SECTION X. Liability and indemnification.

a) Every such Licensee shall pay all damages and penalties which the City may legally be required to pay as a result of the grant of authority to it under the terms of this ordinance. These damages or penalties shall include all damages arising out of the installation, operation and maintenance of the cable system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Ordinance.

b) Every such Licensee shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Subsection "a", above. These expenses shall include, but not be limited to, out-of-pocket expenses, such as attorney fees, court costs, and fees for witnesses.

c) Every such Licensee shall maintain throughout the period of the permit and any extension or renewal thereof, liability insurance insuring the City and every such Licensee in the minimum amounts of:

- 1) \$250,000.00 for bodily injury or death to any one person within the limit, however, of \$500,000.00 for bodily injuries or death resulting from any one accident.
- 2) \$50,000.00 for property damage resulting from any accident.

Certificates of insurance in the foregoing amounts shall be filed with the City.

Failure to carry and maintain such insurance in full force and effect and furnish continuing evidence thereof, in the required amounts may, in the discretion of the City Council, result in termination of such franchise in the manner and under the conditions otherwise specified in this ordinance. Every such Licensee assumes all risk of loss, damage, or destruction

of or to every such Licensee's equipment and other property by the City, its departments, officers, and employees, or resulting from or attributable to the condition of any public street, alley or other public place, other than willful and deliberate misconduct on the part of any official or employee of the City.

SECTION XI. Service standards and requirements.

a) Every such Licensee shall provide and maintain its services in accordance with the best accepted standards of the industry so as to provide its subscribers with a high level of quality and reliability. Every such Licensee shall maintain an office in the City which will be open during regular business hours. Every such Licensee will meet or will exceed all technical standards for operation as set forth in Article 76-605 (Cable Television Standards) of the Federal Communications Act of 1934. Copies of said technical standards for operations will be on file for public inspection at the local office of every such Licensee and in the office of the City Clerk. Every such Licensee shall maintain telephone service to its office during normal business hours and a telephone answering service at other times to receive subscribers' complaints. A well qualified and technically trained service representative shall reside in the Gothenburg area to insure compliance by the Licensee of the terms of this ordinance.

b) Whenever it shall be necessary to shut off or interrupt service for the purpose of making repairs, adjustments, or installations, every such Licensee shall do so at such times as will cause the least amount of inconvenience to its subscribers if reasonably practical, and unless such interruptions are unforeseen and immediately necessary, every such Licensee shall give reasonable notice thereof to its subscribers.

c. In the event of any interruption of service whether planned or unforeseen, every such Licensee shall proceed with due diligence and restore service as quickly as possible under the circumstances.

d. Every such Licensee shall adopt the following procedures for the investigation and resolution of complaints related to the operation of every such Licensee's cable television system. A service representative shall investigate, within 72 hours, any subscriber complaint and resolve the same if possible. If the complaint cannot be resolved by the service representative, it shall be referred to the general manager of the system. Notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of initial subscription to the cable system.

XII. Special Services.

a. The Licensee shall provide one fulltime alphanumeric display local access channel, free for public service use by citizen groups, educators, government officials, or agencies of the City of Gothenburg.

b. The Licensee shall install, upon request of the City, one cable television outlet in each municipal building, hospital, fire station, public library, public school, or other educational facilities within the City. Installation and service for each such outlet will be free, except that any underground construction required will be charged according to the cost of time and materials therefore. Installation of additional outlets within each such building will be provided and charged according to the cost of time and materials therefore. There shall be no monthly subscription fee charged for any outlets in such buildings, regardless of the number involved.

SECTION XIII. Safety requirements.

a. The Licensee shall at all times employ reasonable care in conducting its operations and shall install and use generally accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public.

b. The Licensee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the applicable requirements of the National Safety Code and local ordinances.

c. The Licensee shall maintain at all times its structures, lines, equipment, and connections in, over, under or upon wherever situated or located, in a safe, suitable, substantial condition, and in good order and repair.

SECTION XIV. New developments. It shall be the policy of the City to amend this ordinance, upon the application of the Licensee, to take advantage of any developments in the field of transmission of television signals and related services which will afford it an opportunity more effectively, efficiently, or economically to serve its customers. The City shall upon application of Licensee, amend this ordinance to conform to changes in FCC regulations and within the time permitted or required by such regulations. The expense of advertising required by law incurred by the City in effecting ordinance changes shall be paid by the Licensee.

SECTION XV. Conditions on street occupancy.

a) All transmission and distribution structures, lines, and equipment erected by the Licensee within the City shall be located so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners whose land may adjoin any of the said streets, alleys, or other public ways and places. The Licensee shall obtain approval for the installation of any poles to be installed from the Council, and said Council may require that such installation shall be completed by City employees with the cost for the poles and installation to be paid by the Licensee.

b. The Licensee shall not disturb any pavement, sidewalk, driveway, or other surfacing without prior permission from the City. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Licensee shall at its own cost and expense and in a manner approved by the City Engineer replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed in as good condition as before said work was commenced and shall maintain the restoration in an approved condition during the term of this franchise, or renewal thereof.

c. The Licensee shall have the right, under the supervision of the City's appropriate authority, to trim trees upon and overhanging streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Licensee or otherwise interfering with the operations of the Licensee, such trimming to be at the expense of Licensee.

d. The Licensee, shall, at the request of any person holding a building or moving permit issued by the City, temporarily raise or lower its wires to permit the moving of the building. The expense of such temporary removal, raising or lowering the wires, shall be paid by the person requesting the same, and the Licensee shall have authority to require such payment in advance. The Licensee shall be given not less than 72 hours notice to arrange for such temporary wire change.

e. If at any time during the period of this permit, the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the Licensee, upon reasonable notice by the City, shall remove and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

SECTION XVI. Prohibition against preferential or discriminatory practices; Deposits.

a. The Licensee shall not, as to rates, charges, services, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage within a given class of subscribers in the City.

b) The Licensee may, in its discretion, require from any subscriber or prospective subscriber a deposit to guarantee payment of subscriber fees or to secure the safe return in good working order of any equipment provided to the subscriber by the Licensee. Such deposit shall not exceed an amount equivalent to the greater of the maximum bill for subscriber service for 90 days or the replacement value of the equipment.

The Licensee shall keep records to show:

1. The name of the subscriber making the deposit.
2. The account number or other identification of the premises occupied by the subscriber when the deposit was made.
3. The amount and date of the deposit.
4. A record of each transaction concerning the deposit.

Such deposits may be retained by the Licensee as long as required to insure payment of subscriber fees or the return of the Licensee' equipment. Upon final discontinuance of service, the Licensee may apply such deposit to any amount due from the subscriber for service or damage to or loss of the equipment. Any balance due the subscriber shall be promptly refunded. Prior to final discontinuance of service, deposits guaranteeing payment of subscriber fees may be returned to the subscriber when his credit has been established to the satisfaction of the Licensee.

SECTION XVII. Removal of facilities upon request.

a) Upon termination of service to any subscriber, the Licensee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request, and shall restore such property of subscriber as has been altered or damaged by the installation of such facilities or equipment, in as good a condition as the same was prior to said installation, reasonable wear and tear accepted.

b) Upon termination or cancellation of this permit, as provided for herein, the City shall have the right to require the Licensee to remove, at its own expense, all portions of the system from all public ways within the City.

SECTION XVIII. Transfer or assignment. Any transfer or assignment of the Licensee's rights and obligations under the permit shall be made only upon written approval of the City, and not until the vendee, assignee or lessee has filed in the office of the City Clerk, an instrument duly executed reciting the fact of such sale, assignment, or lease, accepting the terms of the franchise, agreeing to perform all the conditions thereof, which approval shall not be unreasonably withheld.

SECTION XIX. Gross Revenue Report. On or before February 1 of each year, the Licensee shall file with the City a report, certified by the Licensee's Certified Public Accountants, showing the gross subscriber revenues received by the Licensee from subscribers in the City for the preceding year.

SECTION XX. Rights in ordinance.

a) The right is hereby reserved to the City to adopt in addition to the provisions contained herein and in existing applicable agreements such additional regulations as it shall find necessary in the lawful exercise of its police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in substantial conflict with the rights herein granted.

b) The City shall have the right to inspect the maps, plans, and other like materials of the Licensee's cable system at any time during normal business hours.

c) The City shall have the right, at its option, to inspect all construction or installation work, and make such inspections as it shall find necessary to insure compliance with the terms of the permit and other pertinent provisions of law.

SECTION XXI. Revocation. This permit is revocable at the will of the City for breach by the Licensee of a material term of the permit. The City shall provide written notice to the Licensee of any such breach. If the Licensee fails within 60 days after receipt of such notice to correct said breach, then the City shall have the right to revoke any or all rights and privileges granted herein. Revocation shall be effected by resolution duly adopted and the Licensee shall be given the right to be heard prior to such revocation.

Upon revocation or termination of the franchise, Licensee may have and it is hereby granted, the right to enter upon the streets, alleys, viaducts, bridges, roads, lanes and public ways of the City, for the purposes of removing therefrom any or all of its plants, structures, works, pipes, mains, conduits, cables, poles and wires strung thereon, and otherwise, at any time after the City has had ample time and opportunity to purchase, condemn or replace them. In so removing said equipment and appliances the Licensee shall refill, at its own expense, any excavation that shall be made by it, and shall leave said streets, alleys, and public ways and places in as good condition as that prevailing prior to the Licensee's removal of its equipment and appliances.

SECTION XXII. Pay Television. The Licensee shall have the right to provide service for which a per-program or per-channel charge is made (commonly referred to as pay television). Pay television shall not be construed to mean any regular television broadcasting of scheduled programs, whether or not on national networks.

SECTION XXIII. Common user of poles. Where the City or a public utility servicing the City desires to make use of the poles or other wireholding structures of the Licensee but agreement therefore with the Licensee cannot be reached, the City Council may require the Licensee to permit such use for such consideration and upon such terms as the Council shall

determine to be just and reasonable if the Council determines that such use would enhance the public convenience and would not unduly interfere with the Licensee's operations.

The City agrees to allow use of the City poles wherever possible and the Licensee will pay only for the time and materials necessary for rearranging to meeting spacing requirements.

SECTION XXIV. Rates. The Licensee shall have the right and power to fix, charge, collect and receive reasonable rates for community antenna and closed circuit television and other electronic service furnished within the corporate limits of the City, subject to the approval of the City.

The Licensee shall have the right to establish different classifications of service for residential and commercial users and to adopt charges and rate schedules applicable to subscribers within said classifications.

The Licensee shall also have the right to decrease, increase or modify rates for pay television at any time during the period of the permit, subject to the approval of the City. The Licensee shall also take reasonable steps to notify all subscribers of any change in rates at least 30 days prior to their effective date.

SECTION XXV. Credit and bonding. When a franchise has been granted, the Licensee will present to the City within 7 days a letter of credit covering the anticipated cost of construction.

120 days after a franchise has been granted, the Licensee will provide a performance bond to insure completion of all construction.

SECTION XXVII. Severability. In the event that any provision of this franchise is held to be invalid or null and void by any regulatory agency or court of competent

jurisdiction, said provision shall be deemed to be severable from the remainder of the franchise and shall have no effect on the validity of the remaining provisions.

SECTION XXVIII. Non-exclusive permit. Nothing

in this ordinance shall in any manner whatsoever restrict or prohibit the City from granting permits to any other person, association or corporation to operate a cable television system within the corporate limits of the City.

SECTION XXIX. Permit fee. Every such Licensee shall

pay to the City of Gothenburg on an annual basis a permit fee imposed on the Licensee's annual gross subscriber revenues received from subscribers in the City at a rate of 3%.

SECTION XXX. No such franchise shall be granted unless

and until the applicant shall have furnished a bond with corporate surety authorized to do business in the State of Nebraska, and countersigned by a Nebraska authorized agent or attorney, in the penal amount of \$10,000.00 and conditioned for the payment of such permit fee and for faithful performance by the principal of each and every obligation and requirement of such franchise, provided, such bond, upon the agreement in writing of the principal to make monthly accounting to the City Clerk and payment in escrow to a bank or qualified trust company with its principal place of business in Gothenburg, of such permit fee from month to month, may be in the penal amount of \$3,000.00.

SECTION XXXI. The City Clerk, or her agents, may audit

the records of each franchised person, firm or corporation at least once each calendar year for the purpose of verifying the accuracy of the report submitted under Section XIX of this ordinance, and each franchised person, firm or corporation shall keep his, their, or its books and records available for such audit at reasonable times during the regular business day.

SECTION XXXII. Penalties. Any person, firm, or corporation, violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding One Hundred Dollars, or be imprisoned in the City jail for a period not exceeding thirty days, or be both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. Provided that any violation by a Licensee, its assignee, or successors, of the provisions of this ordinance, or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of the franchise issued to such licensee, and all rights hereunder, to the City, after written notice to the Licensee, assignee, or successor, and continuation of such violation, failure, or default, in accordance with Section XXI.


SECTION XXXI. Ordinance repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION XXXI. Safety. The City Council of the City of Gothenburg hereby finds, declares and determines that this ordinance is necessary for the preservation of the public peace, health and safety.

SECTION XXX. Effective time of ordinance. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

PASSED AND APPROVED by the Mayor and City Council of the City of Gothenburg, Dawson County, Nebraska, this 19th day of December, 1978.

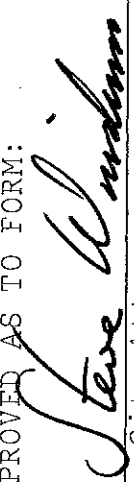
CITY OF GOTHENBURG, DAWSON
COUNTY, NEBRASKA

BY: 
Mayor.

ATTEST:


City Clerk.

APPROVED AS TO FORM:


City Attorney. (11)